83-746

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ALEXANDER L. STEVAS,
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

JULIAN I. RICHARDS, an individual,
Petitioner,

vs.

HOWARD UNIVERSITY, a District of Columbia corporation
and
PATRICIA P. HAMILTON, Personal Representative of the Estate of John L. Hamilton, deceased, the former Ancillary Administrator, d.b.n., c.t.a. of the Estate of Edith A. Parsons,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

JULIAN I. RICHARDS
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Petitioner, Pro Se

QUESTION PRESENTED

Did the District of Columbia Court of Appeals commit reversible error in affirming the Superior Court's imposition of the common law doctrine of Res Judicata as a bar to the litigation of petitioner's complaint seeking removal of a cloud on and a quieting of his title to D.C. real property devised by the Will of his aunt, Edith A. Parsons, and by so doing violate petitioner's constitutional right to due process of law with a resultant fifth amendment deprivation of property?

The parties to the proceeding in the court whose judgments are sought to be reviewed were:

(1) Howard University
c/o James E. Cheek, President
2400 6th Street, N.W.
Washington, D.C. 20059

(2) Patricia P. Hamilton, Personal Representative of the Estate of John L. Hamilton, Deceased, the former ancillary administrator, d.b.n. c.t.a. of the Estate of Edith A. Parsons
c/o James C. Gregg, Attorney at Law
1625 K Street, N.W.
Washington, D.C. 20006

(3) Barbara Jane Richards, now deceased
c/o Personal Representative of her estate,
Elizabeth Ann Richards
5210 Norway Drive
Chevy Chase, Maryland 20015

(4) Elizabeth Ann Richards
5210 Norway Drive
Chevy Chase, Maryland 20015

(5) HG Smithy Company
811 15th Street, N.W.
Washington, D.C. 20005

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OPINIONS BELOW

The District of Columbia Court of Appeals cases petitioner asks be reviewed are four:

1) No. 7831, 328 A 2d 383, pertaining to the conservatorship portion of the estate administration, was decided on Res Judicata grounds. In it the court, inter alia, said:

> Edith A. Parsons died on February 19, 1973, and Richards became the executor of the estate. We note that her death occurred prior to completion of the sale and that the conservator's Second and Final Account, as does the report of the Auditor-Master, lists the property in question as part of the estate subject to probate.

Your petitioner appealed to this honorable court from this decision. The appeal was noted as No. 74-1501, and, upon consideration of the Jurisdictional Statement, was treated as a Petition for a Writ of Certiorari and dismissed.

2) No. 8406, (unreported) an appeal from the order of the Superior Court Probate Division, entered May 7, 1974, authorizing and directing Ancillary Administrator d.b.n., c.t.a., John Hamilton to execute the deed being complained of. The Judgment Order, dated December 20, 1974, dismissed that appeal *without a hearing*. That December 20, 1974 order was in reality the final order in the conservatorship.

3) No. 9672 (unreported), the Judgment Order, entered January 29, 1976, is the last and final order in the D. C. estate administration, dismissing the appeal, from the Superior Court order approving the auditor's report and the first and final account of the ancillary administrator John Hamilton, *without a hearing*.

4) No. 83-208, (unreported), the Judgment Order, entered May 27, 1983, granted appellees Motion for Summary affirmance and was considered on the basis of the record on appeal and your petitioner's 'appellant's brief'. Petition had been made for hearing in banc and this was denied as was the petition for rehearing in banc by the courts per curiam order, entered 6/28/83.

Petitioner Julian I. Richards prays that a Writ of Certiorari be issued to review these final Judgments all involving the administration of the estate of Edith A. Parsons, which began in September, 1971, as a conservatorship of property, having been initiated by your petitioner in the United States District Court for the District of Columbia pursuant to D.C. Code Section 21-1501 and transferred to the Civil Division of the Superior Court for the District of Columbia when the courts were restructured by Act of Congress. It was identified as civil action 1600-71 in both of those courts. Following Mrs. Parson's death on February 19, 1973, the District of Columbia ancillary administration of the decedents estate took place in the Probate Division of the Superior Court of the District of Columbia, identified as administration No. 1062-73.

JURISDICTION

The jurisdiction to review is believed to be conferred on this court, under Article III, Section (2) of the Constitution, as a result of the authority created by Title 28 U.S.C.A. 1257 (3), stating that:

> "Final Judgments or decrees rendered by the highest court of state in which a decision could be had, may be reviewed by the Supreme Court as follows: (3) By Writ of Certiorari, where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

This petition is timely filed because the order denying the petition for hearing in banc and denying the petition for rehearing in banc in case No. 83-208 was entered on June 28, 1983 and petitioner obtained an extension of time to petition for a Writ of Certiorari (A-159) to and including November 7, 1983 which was signed by Justice Brennan on September 6, 1983.

Petitioner's application (A-464) for a Writ of Certiorari to review District of Columbia Court of Appeals cases No. 7831, reported as 328 A 2d 383, No. 8406 (unreported) and No. 9672 (unreported) was timely made, in October Term, 1978. His single petition was not docketed at that time because it sought writs to both the Maryland Court of Appeals and the D. C. Court of Appeals and he was informed by the Clerk's Office that he could by single petition seek the writ to one court or the other at a later date with no specific deadline. On that basis, he returns now petitioning for a writ to the D. C. Court of Appeals and applies for the assignment of a designation to replace A-464 as evidence of the timeliness of his application for

a Writ of Certiorari to obtain a review of the following cases, all pertaining to the estate of Edith A. Parsons, of the Maryland Courts of Appeal:

(1) Judgment Order, entered 9/22/78 in Petition Docket No. 288, September Term, 1978, Court of Appeals of Maryland (unreported).

(2) Per Curiam opinion, entered 7/11/78 in No. 1378, September Term, 1978, Court of Special Appeals of Maryland (unreported).

(3) No. 1077, September Term, 1974, Court of Special Appeals of Maryland, 27 Md. app. 1.

(Please refer to the Jurisdiction section of the companion petition A-158 for Writ of Certiorari to U. S. Court of Appeals for D.C. Circuit.)

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Article XIV, Section One of the Constitution of the United States:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article V, Constitution of the United States:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

* * * * *

DISTRICT OF COLUMBIA CODE
(Volume One – 73 Ed.)

Title11 – Organization and Jurisdiction of the Courts
Subchapter II – Jurisdiction

Section 11-721. Orders and judgments of the Superior Court

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from–

(1) all final orders and judgments of the Superior Court of the District of Columbia;

(2) interlocutory orders of the Superior Court of the District of Columbia–

(A) granting, continuing, modifying, refusing, or dissolving or refusing to dissolve or modify injunctions;

(B) appointing receivers, guardians, or conservators or refusing to wind up receiverships, guardianships, or the administration of conservators ot to take steps to accomplish the purpose thereof; or

(C) changing or affecting the possession of property; and

(3) orders or rulings of the Superior Court of the District of Columbia appealed by the United States or the District of Columbia pursuant to section 23-104 or 23-111(d)(2).

(b) Except as provided in subsection (c) of this section, a party aggrieved by an order or judgment specified in subsection (a) of this section, may appeal therefrom as of right to the District of Columbia Court of Appeals.

(c) Review of . . .

(d) When a . . .

(e) On the hearing of any appeal in any case, the District of Columbia Court of Appeals shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties. (July 29, 1970, Pub. L. 91-358, Section 111, title I, 84 Stat. 480.)

STATEMENT OF THE CASE

Petitioner, Julian I. Richards, was executor–designate in the Will of his aunt, Edith A. Parsons, when in August 1971 he petitioned to be appointed conservator of her estate pursuant to Title 21-1501, District of Columbia Code. In September 1971, the court found the necessity and appointed John E. Powell, a member of the bar, as conservator.

Not even once during the entire conservatorship, in order that it's basic purpose might have been accomplished, did the conservator seek your petitioner's advice or give him any kind of notice whatsoever of any contemplated action.

Disappointed, but with much faith in the law and his profession, petitioner relied that the conservatorship was being carried on satisfactorily, and having offered to assist the conservator, made no attempt to "check up on" or oversee the proceeding.

In August 1972, petitioner received a letter from the Conservator containing a Petition for authority to sell the real estate, which had already been filed at Court; a copy of the sales contract; and a consent form. It was from that petition that he first learned of an earlier sale of stock assets by the conservator. Upon receipt of that, appellant called the conservator's office and was informed by his secretary that written consents to the real estate sale had already been obtained by conservator from petitioner's two sisters.

Petitioner filed an appeal from the order of the Superior Court entered on October 20, 1972, overruling his objection to conservator's petition for authority to sell the real estate. That order was held to be not appealable by both the Superior Court and the District of Columbia Court of Appeals, because of its interlocutory veneer, notwithstanding that the negotiation it authorized had already taken place without notice to appellant, which gave it a practical finality such that appellant felt compelled to appeal from it in self-defense. The order also appeared to be appealable simply from a reading of section 11-721 of the D.C. Code, applicable at the time the appeal was perfected.

It was the actions of the conservator, without notice to your petitioner, relative to the sale of the real property, that first gave rise to the denial of due process; however, that issue was not raised as a federal question by your petitioner until he filed his brief in D.C. Court of Appeals, Case No. 7831.

Checking for the first time the file at court, petitioner was a ered upon verifying for the first time an earlier sale of stock assets and by the realization that he had been denied an opportunity to exert his influence to prevent the sale of the estate assets and that the conservatorship was being subverted, and used as a device to administer the conservatorship as though it were a decedent's estate.

Petitioner respectfully submits that the actions of the Superior Court of the District of Columbia sitting as a court of general plenary jurisdiction, its actions sitting as a Probate

Court; the actions of the D. C. Court of Appeals both as the "highest court" of the District and as a "super-Orphans court"; and the discretionary actions of its fiduciaries, the conservator of property, and, the ancillary administrator d.b.n. c.t.a. were all violative of his right to due process of law and resulted in a continuing deprivation of his property forbidden by the Constitution of the United States, and are as such the egregious error required in Pernell v. Southall, 416 U.S. 129, by reason of this courts unique relationship with the Courts of the District of Columbia, before review and reversal or remand will be granted.

Petitioner is contending that each allegation in the foregoing paragraph is true and patent in the record because he will show that the jurisdiction of the D. C. Superior Court to entertain the sales contract in the first instance was lacking, being in subverting conflict with the basic purpose of CA 1600-71; the jurisdiction of the D. C. Superior Court to enter the confirmation order was lacking in CA 1600-71, that civil action proceeding being on appeal to the D. C. Court of Appeals; the jurisdiction of the probate division to either complete the so called Judicial Sale or order the property to be deeded in order to properly administer a decedent's estate was lacking because it did not take appropriate action to exercise dominion and control over the title to the res (real property) and was without jurisdiction of the proceeding containing the sale and could not and did not comply with the statutes under which it could have properly taken action to attempt to establish an administrative necessity for such a real estate sale and take action to divest its title from the devisees.

On July 1, 1982, your petitioner filed, as simultaneously as he could, two civil actions to Quiet Title to Real Property; first, No. 82-1854 in the United States District Court for the District of Columbia, and then, minutes later, CA 8771-82 in the Superior Court for the District of Columbia. He did this out of fear that diversity action 82-1854 involving local real property might be held to be no longer within the jurisdiction of the United States District Court for the District of Columbia, *or*, that in CA 8771-82, he be barred from prosecution by Res Judicata. He acted on information from the D.C. Register of Wills office that his right to pursue a claim against the estate of the late John Hamilton would expire unless a civil lawsuit were begun by early July 1982.

Up until that time, everything involving his 1/6th fee simple estate in the subject real property that had taken place in the courts of the District of Columbia following the ending, on February 19, 1973, by the ward's death on that date of the power and authority of the conservator in D.C. Superior Court civil action 1600-71, (a conservatorship of property), In Re *Beier*, 48 N.J. Super. 450, 137 A.2d 617 (1958), including the execution and recordation of the deed being complained of, took place within the framework of a decedent's estate administration.

Petitioner respectfully submits that the actions of the Superior Court of the District of Columbia sitting as a court of general plenary jurisdiction, its actions sitting as a Probate Court; the actions of the D.C. Court of Appeals both as the "highest court" of the District and as a "super-Orphans court";

and the discretionary actions of its fiduciaries, the conservator of property, and, the ancillary administrator d.b.n. c.t.a. were all violative of his right to due process of law and resulted in a continuing deprivation of his property forbidden by the Constitution of the United States.

It was an egregious error for the D. C. Court of Appeals in No. 83-208 to affirm the invocation of Res Judicata by the D. C. Superior Court in its case No. 8771-82 there having not been a fully and fairly litigated ajudication of the issue of jurisdiction in the previously decided civil action. No. 82-1854 in the U. S. District Court for the District of Columbia.

(Please refer to the Statement of the Case in companion petition, A-158, for Writ of Certiorari to U. S. Court of Appeals for D.C. Circuit.)

ARGUMENT

Petitioner respectfully urges that there are numerous reasons the Court should exercise its jurisdiction. Most importantly a United States citizen is being deprived of his property without due process of law and that deprivation is continuing because the D.C. Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a departure by the Superior Court of D.C. as to call for an exercise of this courts power of supervision and review.

This departure involved, the subversion of the basic purpose of the conservatorship; its treatment as an Orphans Court proceeding as described by this court in Ferris v. Higley, 87 US 375, rather than as an ordinary civil action; and, the sanctioning of a conflict of interest between John Hamilton, as anc. adm. d.b.n. c.t.a., and, as agent of the Vendor Court in attempting to complete a judicial sale. Hamiltons' effort to complete the sale conflicted with his duty to serve the interests, equally, of all these interested in the estate and to comply with the statutory scheme of law applicable in the premises.

It is an important substantial question of federal law whether or not the attempted divestiture of Petitioners title was in conflict with applicable decisions of this court. This petition will show that it was.

It is also an important substantial federal question whether or not a local court rule – Rule 308 of the Civil Rules of the Superior Court of D.C. – incorporating by reference a federal

statute, Title 28-2001 U.S. Code, can be used as a primary source of selling authority in a judicial sale, the only justification for which was service to the basic purpose of the Conservatorship which the local common law declares to be ". . .to preserve the estate. . .", Rossi v. Fletcher 418 F2d 1169 US app. (1969). Is it due process to do that, and sanction it, when the "local law" federal statutory scheme, in service to the integrity of the stated purpose of the proceeding, negates entirely the authority set forth in the rule of court and its incorporated federal statute?; and when that conflict of laws is used to arbitrarily subvert the orderly administration of justice resulting in years and years of unsettled rights, turmoil, and lack of the repose the law is intended to facilitate?

Another important reason jurisdiction should be exercised is that the Res Judicata issue presented here has national repercussions; it "has an impact not confined to the Potomac shores", General Motors Corp. v. District of Columbia, 380 US at 556. This is so because, as this court said in Durfee v. Duke, 375, US 106, "By the Constitutional provision for full faith and credit, the local doctrines of res judicata, speaking generally, become a part of national jurisprudence, and therefore federal questions cognizable here. Riley v. New York Trust Co. 315 US 343, 349, 86 L ed 885, 891, 62 S Ct 608." That Res Judicata issue is whether the doctrine is applicable to estate administration where no plenary proceedings have taken place, id est. in an administration governed by Ferris v. Higley.

Petitioner submits that both the D.C. Court of Appeals and the U. S. Court of Appeals (DC) have decided that it does

so apply and have decided that in a way in conflict with applicable decisions of this court as will be shown.

In the Ohio case, Boswell's Lessee v. Otis, et al., 9 How. 336, 13 L Ed 164 (1850) this court said:

"A bill for the specific execution of a contract to convey real estate is not strictly a proceeding in rem, in ordinary cases; but where such a procedure is authorized by statute, on publication, without personal service of process, it is, substantially, of that character."

"It is a special and limited jurisdiction, and cannot be legally exercised, except within the provisions of the statute."

"It may be difficult in some cases to draw the line of jurisdiction so as to determine whether the proceedings of a court are void or only erroneous. And in such cases every intendment should be favorable to a purchaser at a judicial sale. But the rights of all parties must be regarded. No principle is more vital to the administration of justice, than that no man shall be condemned in his person or property without notice, and an opportunity to make his defense. And every departure from this fundamental rule, by a proceeding in rem, in which a publication of notice is substituted for a service on the party, should be subjected to a strict legal scrutiny. Jurisdiction is not to be assumed and exercised in such cases upon the general ground, that the subject matter of the suit is within the power of the court. This would dispense with the forms of the law prescribed by the Legislature, for the security of absent parties. The inquiry should be, have the requisites of the statute been com-

plied with, so as to subject the property in controversy to the judgment of the court, and is such judgment limited to the property named in the bill? If this cannot be answered in the affirmative, the proceedings of the court beyond their jurisdiction are void."

In 1892, it was reemphasized in Cox v. Hart, 145 US 376, that judicial sales enjoy a certain favor in the law and that every reasonable intendment must be made in favor of their validity and petitioner submits that in the Parsons estate administration the only time such an opportunity presented itself the requirement was met, dutifully, by the D.C. Court of Appeals when in 328A2d 383 (No. 7831) it decreed the confirmation order to be effective as of its original date of entry and when it declared that Res Judicata barred Petitioner "... from further litigating his objection to that sale." – clearly only an estate settling device in light of the other appeals pending at that time. These actions, however, were not and are not enough to give validity to the attempted sale in question – *there must be* a valid confirmation order before it is imperative that a judicial sale be completed. If, when the time comes to execute the completing conveyance it still remains possible to complete, Gibson v. Lyon, 115 US 439, 6 S Ct 129, 29 L Ed 440; 47 Am Jur 2d 100. Such was not the case in the Parsons estate administration as the record and this petition will show.

A valid confirmation is dependent upon the basic jurisdictional fact that the trial court have the proceeding before it and that it not be in the appeals court when confirmation is

entered and that there be in the court with each succeeding step therein continuing jurisdiction and control over the res of the sale and compliance with the statutes providing for divestiture. Such was not the case in the Parsons estate administration.

As this court said in 1864 in Gray v. Brignardello, 1 Wall 627, "although an officer may suppose that the power to sell is given by a decree, yet if it is not given, and if he does sell, the sale will be void." Not even a bona fide purchaser is protected. See Townsend v. Tipton 289 Ky. 766, 160 SW 2d161, 142ALR 306.

In Williamson, et al. v. Berry, 8 How. 495, 12LED1170 this court said: "By judicial sale is meant one under the process of a court, having competent authority to order it, by an officer *legally appointed* and commissioned to sell." (Emphasis added) John Hamilton was not legally appointed. His authority came from the Superior Court's probate division, at a time when the entire conservatorship proceeding (a civil action) was on appeal to the D.C. Court of Appeals. As declared by the local D.C. Municipal Court of Appeals in Potts v. Catterton, 82 A 2d133 (1951):

"This ruling was correct. 'Two courts cannot have jurisdiction in the same case at the same time.' Lasier v. Lasier, 47 App. D.C. 80. Appellant had no right while prosecuting an appeal in this court to seek a reopening of the judgment in the trial court. Its jurisdiction was at an end when the appeal was taken to this court."

Petitioner submits that Hamilton's appointment to execute the deed was more than a mere irregularity. As said in Lamaster v. Keeler 31 L ED 238, 123US376, (1887)." A confirmation of a sale may cure mere irregularities not affecting its fairness, but not an infirmity growing out of the nullity of the judgment under which it was had."

The violations of petitioner's right to due process, leading to the deprivation, began in CA1600-71, a D. C. Superior Court conservatorship of the property of petitioner's Aunt's estate and were approved by the D. C. Court of Appeals Judgments in case No. 7831, 328A2d383, and No. 9672 (unreported). In 7831 the court made the overall *mistake* of upholding the validity of an attempted judicial sale, citing Morrision v. Burnette, 154 F 617 (Ind. T1907) 8th C.C.A., which holds the law in the District to be:

"But after the sale is confirmed that discretion has been exercised. The power to sell and the power to determine the price at which the sale shall be made has been exhausted. From thenceforth the court and the successful bidder occupy the relation of vendor and purchaser in an executed sale, and nothing is sufficient to avoid it which would not set aside a sale of like character between private parties. Hence the rule is settled, and it seems to be universally approved, that after confirmation of a judicial sale neither inadequacy of price, nor offers of better prices, nor anything but fraud, accident, *mistake, or some other cause for which equity would avoid a like sale between private parties,* will warrant a court in avoiding the confirmation of the sale or in opening the latter and receiving subsequent bids.

"Pewabic Mining Co. v. Mason, 145 U.S. 319, 367, 12 Sup. Ct. 886, 36 L. Ed. 732; . . .Graffam v. Burgess, 117 U.S. 180, 191, 192, 6 Sup. Ct. 686, 29 L. Ed. 839; . . .Smith v. Black, 115 U.S. 308, 317, 6 Sup. Ct. 50, 29 L. Ed. 398; . . ." (Emphasis added)

This court speaking to the fashioning of a harmless-constitutional-error rule in Chapman v. California, 386 U. S. 18, pointed out that such a rule . . . emphasizes an intention not to treat as harmless those constitutional errors that "affect substantial rights" of a party. Petitioner submits that the *mistake* of the D. C. Court of Appeals in upholding the validity of the confirmation order in 328 A2d383 as a jurisdictionally valid exercise of sound judicial discretion, affected his "substantial right" to have the purpose of the conservatorship served rather than subverted. And it is that failure of the two D.C. local courts to uphold the integrity of the conservatorship by insisting that its clear and narrow purpose be well served that is too far a departure from an acceptable course of judicial proceedings calling for an exercise of this court's power of supervision.

Petitioner avers that a number of Morrison v. Burnette *Mistakes* occurred in the administration of his aunt's estate with the first such induced by the conservator's misleading and erroneous memorandum of law. The Superior Court egregiously misconstrued Section 11-721, D.C. Code 73ed, which allows appeals from certain interlocutory orders. (See Petition p. 6.) The interlocutory order, petitioner's appeal from which was ignored by the court and conservator, authorized negotia-

tions for a judicial sale and, it is submitted by your petitioner, was clearly appealable under either Section 11-721 A(2)B or Section 11-721 A(2)C. The court itself said in its 7831 opinion, "The trial judge sought memoranda respecting the appealability of the order. *No doubt* questioning the trial courts continued jurisdiction if this court had acquired jurisdiction." (Emphasis added)[1]

Choosing to consider the order appealed from as non-appealable court and conservator went on to make a second such *mistake*. It issued a show-cause order, held a hearing and entered a confirmation order which petitioner also appealed from out of fear and lack of knowledge. Jurisdiction of the entire proceedings was in the D.C. Court of Appeals when that second *mistake* was made and for that reason alone and others the confirmation order and deed are both void.

Petitioner contends that in CA1600-71 the D.C. Superior Court exceeded its jurisdictional authority when it *mistakenly* entertained the presentation of the sales contract in the first piace. As noted in 328A2d383 (No. 7831) the conservator was threatened with a partition suit if he did not go along with the sale. However, the law of the District of Columbia has held since 1897, when it was said in Sis v. Boarman, 11 app. D.C. 116, that:

"Partition, or sale for the purpose of partition, is allowed only to him who has an estate in the property sought to be partitioned or sold."

[1] It can and should be inferred from that statement that a D. C. conservatorship of property is an ordinary civil action in that it can only be conducted in one court at any given point in time.

"No one is entitled to maintain partition who has not an estate that entitles him to immediate possession."

"Much less is the beneficiary under a deed of trust entitled to have partition; for he has no estate whatever, and no possibility even of a right of possession. Nor has the trustee in the deed any such right, for his trust is specifically limited to a right of sale upon a certain specified contingency." Those who threatened partition were trustees under a testamentary trust to provide monthly income to its beneficiaries. The conservator's duty was to oppose those threats, there being no need to sell.

As stated in Rossi v. Fletcher, 418 F 2d 1169, U. S. App. D.C. (1969), "The conservatorship statute was *designed to preserve* the estate of persons who are unable to manage their own property." (Emphasis added) Had petitioner thought it would be used for any other purpose, he most certainly would not have initiated it, especially, when the law is that a "clear abuse of discretion" is required for a reversal of a lower court conservatorship decision. Price v. Williams, 393 F 2d 348 (1968) D. C. app. (1968).

Petitioner contends that both conservator and court exceeded their jurisdiction and were derilect in their duty to preserve the estate during the wards infirmity. The law of Sis v. Boarman appears to be anchored in the thought that fairness and decent human relations require that "you do not kick a man when he is down" and to allow a partition suit to be tried during an estate administration when inchoate interests and lack of standing may result in a justified incapacity to know

what interest in a property a defendant may really have and unfairly affect decisions to defend those interests. Adherence to the basic duty to preserve by the conservator, a faithfulness to his trust, is the best design the law can provide to protect the "interested persons", the "orphans", at a time when they are quite naturally "down" because of the wards infirmity and the expense of caring for him or her, it is respectfully submitted.

At page 5, in his case No. 7831, appellant's brief, petitioner made the statement that the D. C. Superior Court had appointed the conservator pursuant to Section 21-1506 to care for his ward's personal welfare. That statement was made because petitioner overheard a discussion to that effect at the bench between the conservator and Judge Theodore Newman (the only Judge involved in the estate administration in the Superior Court) at the close of the Rule Nisi hearing on January 12, 1973 as he, the petitioner, was leaving the courtroom. It appears that conservator Powell must have convinced Judge Newman that such an appointment was unnecessary in as much as the ward was receiving excellent intensive care as well as familial love and attention because the record contains no convincing evidence that such an order was made and no evidence that it was entered on the docket. Evidence that no such order was effectively made can be inferred from the conservator's letter to the Clerk (See appendix p. A-30) wherein conservator said he thinks "...the death of Mrs. Parsons terminated the conservatorship and my authority to act and my authority to act in pursuance of the Superior Court order."

For better, or for worse petitioner opines, subject matter jurisdiction over real property is present under the D.C. statutes

in conservatorships and guardianships as well, of course, as in decedent's estates. What is too complex, confusing, ambiguous, vague, impractical, mutually in conflict, overlapping, inadequate, and in conflict with applicable decisions of this court are the procedures which must be followed in the exercise of that jurisdiction to gain for the court requisite jurisdictional dominion and control over the real property. What to do and when to do it and the affect on the basic nature of, and the duties in a particular proceeding must be clarified and improved or unconstitutional *mistakes* will continue, petitioner respectfully submits. The public will be deceived by a proceeding's purpose being subverted; supposed duties being flounted; powers better contained in another proceeding can be usurped by greedy, quick-fixers in a conglomerate proceeding infected with conflicts of interest and of laws, and the repose dispensing doctrine of res judicata can be perverted to become a poisoning weapon, however well motivated its invocator may be in attempting its use as an estate settling device. These problems can continue, notwithstanding the D.C. revised code provision which purports to pass title to realty to the estate personal representative, unless this court grants this petition and reviews the Parsons' estate administration.

Assuming then that the subject matter jurisdiction over a ward's real estate allowed by Section 21-1503 D.C. Code 73 Ed was present and proper, is not the case law of this court's decision in Thaw v. Falls, 136 U.S. 519 (1890) applicable? In Thaw v. Falls, construing one of, if not the original D.C. statute pertaining to the sale by a Guardian of an infants real estate for his maintenance, it is said "In the case of real estate,

the order of sale, after being passed by the Orphans Court, must be presented to and approved by the Court of Chancery or the General Court; but no separate suit need be instituted in either of those courts." If this approval was given in the sale being complained of, it was done without notice to petitioner and certainly cannot be claimed to have been made by some sort of ratification effected by the D.C. Court of Appeals opinion in case No. 7831. The 7831 opinion was handed down in November 1974 and due process your petitioner opines would assuredly require that a Thaw v. Falls approval presentation have taken place months and months earlier, closer to the May 7, 1974 order for the deed execution by the Orphans Court probate division of D.C. Superior Court and would also require that notice of that presentation be made to all non-consenting interested persons at the very least and that an opportunity to oppose the approval be afforded. If approval was obtained, it was done so in a surreptitious, unconstitutional way it is submitted.

In Thaw v. Falls, this court was dealing with a guardianship and in it required in its decision that the approval of two courts be obtained for a sale of the infants real property. It would seem reasonable and prudent therefore to require as much or even more approval for such a sale in a blended, combination guardianship-conservatorship proceeding lest its basic purpose be subverted and constitutional rights violated.

It is doubtful and unsettled whether or not Sections 21-145 and 21-147 and the related provisions of Subchapter II of Chapter 1, of Title 21, D.C. Code 73 Ed. overrule Thaw v.

Falls in all of its substantive requirements. Petitioner respectfully submits that as to guardianships, Subchapter II seems to do just that but inasmuch as Subchapter II wasn't complied with by the conservator, the courts, and administrator Hamilton that non-compliance is just another *mistake* within the meaning of Morrison v. Burnette, rendering the sale void.

As Chief Justice Marshall said in Thatcher v. Powell, 6 wheat 119 (1820):

"In summary proceedings, where a court exercises an extraordinary power under a special statute prescribing its course, we think that course ought to be exactly observed, and those facts especially which give jurisdiction, ought to appear, in order to show that its proceedings are coram judice. Without this act of assembly, the order for sale would have been totally void. This act gives the power only on a report to be made by the sheriff. This report gives the court jurisdiction, and without it the court is as powerless as if the act had never passed."

In a conservatorship of property, a real estate sale appears permissible under 21-1503 only if Sections 21-142 through 21-151 are complied with, or, a two court Thaw v. Falls approval is obtained within the requirements of due process, and the res is brought under the jurisdictional dominion and control of the court in accordance with this courts requirements as enunciated in the cases of Boswells Lessee v. Otis, et al., 9 Howard 336 (1850); Cooper v. Reynold's Lessee, 10 Wall 308 (1870); Heidritter v. Oil Cloth Company, 112 U.S. 294 (1884); and Shields v. Coleman, 157 U.S. 168 (1895). These cases are

conflicted with by the way the D.C. Court of Appeals decided and/or circumvented the jurisdictional issues raised by petitioner's pleadings in cases No. 7831, 9672 and 82-208. Neither procedure was followed in the case at bar.

In Boswell's Lessee, a Bill for the specific execution of a contract to convey real estate had been filed but made no mention of one lot subsequently sold under the decree of execution. It was held that *the unmentioned lot had not been brought with the jurisdiction of the court* and that as to it the decree was void. The cases' headnote states the general principle that "an act of jurisdiction not conferred by law over property of a non-resident is absolutely void." Petitioner submits that the Order of the Probate division of D.C. Superior Court authorizing the execution of the deed beclouding petitioner's title while purporting to complete a judicial sale and in defiance of the necessity requirement of the decedent estate statutory scheme was just such an act – as was its 'agents' act in executing and recording it; neither act affecting the title to the subject real property or control over it so as to effect a divestiture, a conveyance of title and delivery of an effective deed containing any, much less marketable, title.

The vendor-court's agent John Hamilton's petition for authority to execute the deed to complete the sale is very clearly analygous to the Bill in Boswell. Both sought to execute contracts to convey real estate and both were, as said in Boswell ". . .not strictly a proceeding in rem. . ." but ". . .substantially of that character." Hamilton's petition was in effect an equitable proceeding in rem and as such subject to the law set forth by this court in the aforementioned cases:

In Cooper v. Reynold's Lessee, this court said:

"It is as easy to give a general and comprehensive definition of the word "jurisdiction" as it is difficult to determine, in special cases, the precise conditions on which the right to exercise it depends. This right has reference to the power of the court over the parties, over the subject-matter, over the res or property in contest, and to the authority of the court to render the judgment or decree which it assumes to make."

"Jurisdiction of the res is obtained by a seizure under process of the court, whereby it is held to abide such order as the court may make concerning it. The power to render the decree or judgment which the court may undertake to make in the particular cause, depends upon the nature and extent of the authority vested in it by law in regard to the subject matter of the cause."

In Heidritter, this court said:

"In Cooper v. Reynolds, 10 Wall, 308-318 (77 U.S., XIX, 931, 933), it is said by Mr. Justice Miller, delivering the opinion of the court, that, in such cases, where there is no appearance of the defendant and no service of process on him, 'The case becomes, in its essential nature, a proceeding in rem,' and that, p. 317, 'while the general rule in regard to jurisdiction in rem requires an actual seizure and possession of the res by the officer of the court, such jurisdiction may be acquired by acts which are of equivalent import and which stand for and represent the dominion of the court over the thing and in effect subject it to the control of the court."

This may be by the levy of a writ, or the mere bringing of a suit. "It is immaterial," said this court by Mr. Justice McLean, in Boswell v. Otis, 9 How., 336, "whether the proceeding against the property be by an attachment or bill in chancery. It must be substantially a proceeding in rem."

And finally, in Shields, this court said:

In Heidritter v. Elizabeth Oil Cloth Co., 112 U.S. 294, 301 [28:727, 731], a question was presented as to the time that jurisdiction attaches. Mr. Justice Matthews, after quoting from Cooper v. Reynolds, 77 U.S. 10 Wall, 308 [19:931], and Boswell v. Otis, 50 U.S. 9 How. 336 [13:164], observed: *"But the land might be bound,* without actual service of process upon the owner, in cases where the only object of the proceedings was to enforce a claim against it specifically, *of a nature to bind the title.* In such cases the land itself must be drawn within the jurisdiction of the court by some assertion of its control and power over it. This, we have seen, is ordinarily done by actual seizure, but *may be done by the mere bringing of the suit* in which the claim is sought to be enforced, which may, by law, be equivalent to a seizure, being the open and public exercise of dominion over it for the purpose of the suit." (Emphasis added)

The D.C. administration of the estate of Edith A. Parsons (CA 1600-71, conservatorship of property and Adm. 1062-73, decedent's estate) was conducted from beginning to end as though it were a single non-judicial administrative proceeding. Petitioner submits, however, that as a matter of law, it con-

sisted of two distinct proceedings, the first of which (the conservatorship) contained an ajudication (Case No. 7831) holding that the confirmation order pertaining to the judicial sale contract was a valid subsisting one which required the vendor court to complete the sale if its jurisdiction and authority would permit. In No. 7831, the court said, "Both Section 2001 and Superior Court Civil Rule 308 reveal that the final judicial step leading to a private sale is court approval through confirmation. Subsequent to that the parties are committed to complete the transaction." Your petitioner was not a party to that contract.

That first proceeding was improperly conducted as though it was an administrative one unfettered by the common law and its rules of procedure and evidence in accordance with the declarations of law made by this court in Ferris v. Higley, 87 U.S. 375. However, as a matter of local law, it was, and is, a civil, plenary, adversary action subject to the same rules of the common law, due process requirements, federal rules of civil procedure, rules of the Superior Court civil division, and the same appellate practice and procedure as is any other civil action in the D.C. local court system. What then is the significance of the "civil action" nature of CA 1600-71 to petitioner's contention regarding his title to the real property in question? It is that at the time the Superior Court entered the confirmation order, January 12, 1973, the proceeding was no longer before that court.

The docket discloses that the order authorizing the negotiation for the sale, dated October 20, 1972 was appealed from on November 17, 1973 (No. 7128) and that appeal was out-

standing until it was dismissed on October 4, 1973. At the time of that dismissal, the appeal case No. 7831 was outstanding, and had been since August 14, 1973; it being an appeal from the final order in CA 1600-71, which had approved the auditor-masters report on the conservator's second and final account and, conditioned on a verified statement of Distribution and Settlement, discharged the conservator and the Surety. No. 7831 was decided on November 13, 1974, the ward had died on February 19, 1973 and an exemplified copy of her last will and testament was recorded on May 24, 1973 in Wills Liber 721 at folio 388, vesting title to the real property in question as of D.O.D. 2/19/73. Scott v. Powell, 182 F.2d 75 (1950) D.C. Cir. and Section 18-301, D.C. Code 73 Ed.

Because CA 1600-71 was not an "orphans court", Ferris v. Higley proceeding, the jurisdiction of the Superior Court to make and enter the confirmation order complained of was lacking – the entire civil action proceeding proceeding being on appeal in the D.C. Court of Appeals at that time -- the confirmation order and the deed based on its validity are void.

Prior to the repeal of D.C. Code Section 11-522 (1967 Ed) it appears that conservatorship such as CA 1600-71 were not ordinary civil actions. In the case of Price v. Williams, 393 F.2d 348, 351 D.C. app. (1968), the U. S. Court of Appeals for D.C. referring to a conservatorship said, "in exercising these powers, the court is known as the Probate Court." It seems reasonable to infer from that that Ferris v. Higley did govern conservatorships prior to the repeal of Section 11-522, however, petitioner's contention is that his grievances with

CA 1600-71 arose because that civil action proceeding was conducted as though it were unrestricted because of its supposed encompassment with the terms of Ferris, as an orphan's court proceeding. However, 11-522 had been repealed before CA 1600-71 began and conservatorships had become recognized by the Superior Court as ordinary general jurisdiction civil actions to be excepted from the rule of Ferris v. Higley as is evidenced by their placement in the civil division, subject to its rules rather than those of the probate division.

Nevertheless, when one looks at how CA 1600-71 was conducted, confusion sets in because that proceeding was not conducted as an ordinary civil action as it should have been and petitioner has been left to suffer the consequence of the lack of due process as a result. The conservator should have been required to comply meticulously with either the requirements of Sections 21-142 through 21-151, D.C. Code 73 Ed. or carry out a Thaws v. Falls double approval in conformity with the notice requirement of due process.

The deed being complained of is not only void because it was a futile attempt to complete a sale (with the "orphans court" acting as agent of the Superior Court civil division in authorizing its execution) it is also void because the probate division in that attempt committed three *mistakes* within the meaning of Morrison v. Burnette any one of which petitioners submits provides ample reason to set it aside as void and a cloud on petitioner's 1/6th fee simple estate:

1) It did not hold a hearing on the propriety of its authorization of the deed execution and made no findings in

that regard which could be subjected to appellate scrutiny.

2) It took no action to bring the res of the sale within its jurisdictional dominion and control.

3) It sought no input to show the necessity for divestiture of petitioner's title in order that the decedent's estate could be properly administered in compliance with the statutes and cases.

It simply, with Star-Chamber arbitrariness, ordered the execution of the deed, as requested by administrator d.b.n. c.t.a. Hamilton attempting to complete the *sale* – a sale the propriety of which Hamilton conceivably could have had no knowledge of whatsoever. The sale, as an executed subsisting contract (which petitioner denies it ever was), would have been dependent, not only on its possessing the inherent quality, under the Parsons estate circumstances extant, of being able to survive the ending of its encompassing proceeding; see In Re *Beier*, 48 N.J. Super. 450, 137 A.2d 617 (1958), but also on the power of the court with subject matter jurisdiction (following the wards death was the court with subject matter jurisdiction the probate court or the civil division court, which had administered the conservatorship?) to reassert jurisdictional dominion and control over the res which had been abrogated by an act of God (the wards death) causing title passage to petitioner by the operative effect of the probating of the will (see Scott v. Powell, 182 F.2d 75 (1950) D.C. Cir. and Fairlaw v. Forrest, 130 F.2d 829 (1942) D.C. Cir. and brought into application the statutory scheme relative to the administration of decedent's estates.

The resulting impossibility of performance prevented a completing consummation of the contract (as would be anticipated had there been a valid confirmation order) and made specific performance unavailable against the Vendor; 12 Am. Jur. contracts Section 375, 376. A valid, unappealed from confirmation order vests the right in the purchaser to have the contract executed if possible but doesn't, per se, vest title to the land in the purchaser. See Robb v. Vos, 155 U.S. 13, 39 L. Ed. 52 (1894) Headnote 6. As this court said in Gibson v. Lyon, 115 U.S. 439:

"The sanction of the court to the fact and form of the conveyance was a judicial act, necessary to perfect the proceeding; for, without the deed, the sale would not have been consummated, and no title would have been divested and passed. Foster v. Gray, 22 Pa. St. 15; Brown's Appeal, 68 Pa. St. 53."

CONCLUSION

It has been recognized in the District of Columbia that "situations may arise which call for exceptions" to the doctrine of Res Judicata. See Spilker v. Hankin, 188 F.2d 35 (D.C. Cir. 1951). That case holds that the doctrine as the embodiment of public policy must, at times, be weighed against competing interests and must, on occasion, yield to other policies. Therefore, in the case at Bar, it is respectfully submitted, public policy should be held to require that the integrity of the stated purpose of a legal proceeding be upheld wherever possible lest the statutory remedies provided to the public be laden with deception and pitfalls denying the due process our Constitution

promises. In addition, it is submitted that the dignity of the title passing by the probating of a decedent's Will is a competing interest deserving of inclusion within the meaning set forth in Spilker v. Hankin.

Res Judicata is being erroneously invoked as only an estate-settling device covering up error, mistakes and/or misapprehensions of the law; petitioner's Quiet Title Action not being a *relitigation;* or a *repetitious suit* such as was contemplated by this Court in Commissioner v. Sunnen, 333 U.S. 591.

It should be required that a deed conveying title be clearly included in one Proceeding (Conservatorship) or another (Decedent's estate) in order that the propriety of its authorization and its validity might be readily ascertained.

Petitioner's constitutional rights, privileges and immunities have been violated, and he has been damaged, as a result of the *subversion* of the conservatorship by breaches of the basic duty thereof, and by the failure of Administrator, d.b.n. c.t.a. Hamilton to equally serve the interests of all those interested in the estate of Edith A. Parsons which *failure* is clearly evidenced by non-compliance with the controlling statutory scheme pertaining to the sale of real estate in the administration.

The deed is *void* on jurisdictional grounds and was *unnecessary* to complete the estate administration. Adequate stock and real estate collateral were available to the estate and/

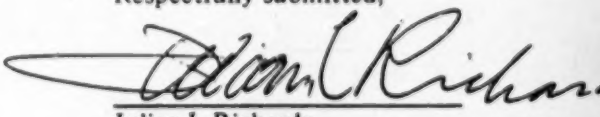
or the interested persons so that a loan could have been arranged to pay the estate taxes.

The death of the ward ended any obligation the confirmation order may have created to complete the judicial sale.

Petitioner holds the legal and equitable fee simple title to real property, Bauserman v. Digiulian, 224 Va. 414 (1982), which has greatly appreciated in value since 1972, the enjoyment and control of which he is being deprived of as a result of the mistakes of the fiduciaries and the courts in C.A. 1600-71 and Adm. 1062-73 and in C.A. 82-8771; C.A. 82-1854; and the appeals therefrom.

For these reasons this honorable court should exercise its jurisdiction and issue a Writ of Certiorari to the District of Columbia Court of Appeals.

Respectfully submitted,



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(Please refer to the Argument and Conclusion in companion petition, A-158, for Writ of Certiorari to U. S. Court of Appeals for D.C. Circuit, which supplements A-159.)

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APPENDIX

Section 16-3105. Plenary proceeding; refusal to answer as required

When either of the parties having a contest in the Probate Court requires, the court may direct a plenary proceeding, by bill or petition, to which there shall be an answer, on oath or affirmation. If the party, refuses to answer on oath or affirmation, as the case may require, to any matter alleged in the bill or petition, and proper for the court to decide upon, the court may exercise its contempt power, or it may have his property attached and sequestered as provided by section 16-3104. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88-241, Section 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91-358, title I, Section 145(l)(2), 84 Stat. 561.)

Section 18-512. Plenary proceedings

In all cases of controversy the court may direct a plenary proceeding to be had, by bill or petition, to which there shall be answer under oath, which may be compelled by the usual process, and all the depositions shall be taken down in writing and filed; or, if either party requires it, the court shall direct an issue to be framed for trial by a jury. (Sept. 14, 1965, 79 Stat. 692, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 20-353. Application for letters; contents; bond; sale of real estate

When a person applies to the Probate Court for letters testamentary or of administration, he shall set forth, under oath, as fully as possible, all the personal and real estate left by the decedent and the amount of his debts as far as can be ascertained. The penalty of the bond required of him, except in the cases provided for by sections 20-303, 20-304, and 20-333, shall be sufficient to secure the proper application of all the personal estate of the testator or intestate. If it

becomes necessary to sell the real estate of the decedent, in part or in whole, the executor or administrator shall give such additional bond, with approved security, as the court directs, to secure the proper application of the proceeds arising from the sale. Where an executor is empowered by the will to sell the real estate of the testator, for any purpose, he shall account for the proceeds in the court. (Sept. 14, 1965, 79 Stat. 708, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 20-1106. Authority of court regarding sales of realty; responsibility for proceeds; restrictions on sales; auditor's report; sales without reference to auditor

The Probate Court has plenary authority to administer the real estate situated in the District of Columbia of decedents as far as may be *necessary* for the payment of funeral expenses, debts, costs of administration, and estate, inheritance and succession taxes, and legacies, and to distribute among those entitled thereto the surplus proceeds of sales of real estate made in the course of the administration. The bonds of executors and administrators are responsible for the proceeds of sale of real estate sold by them under the order of the court for purposes of administration. A sale of real estate may not be made unless it is required for the purposes of paying the above-mentioned charges and such legacies as are chargeable upon the real estate, or, except where consents have been filed with the court as hereinafter provided, until the auditor of the court has ascertained and reported those debts and legacies, *the deficiency of personal assets,* and the real estate necessary to be sold for the payment of the charges and legacies. Objections to the report may be filed, heard and determined as provided by rules of court. *Upon a proper showing* by the fiduciary of an estate that the personal estate of a decedent is insufficient to meet all of the aforesaid charges and that all or part of the decedent's

real estate must be sold to pay all or part of the said charges, the court may order the sale of all or part of said real estate without reference to the auditor, provided all persons who have an interest in the real estate to be sold shall have filed with the court their consents to the sale thereof. In the event a person having an interest in the said real estate is not sui juris, the court may accept on his behalf the consent of a fiduciary duly appointed for the estate of said person, or may appoint a guardian ad litem who shall have the right to file a consent on behalf of said person. (Sept. 14, 1965, 79 Stat. 718, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966; Aug. 11, 1971, Pub. L. 92-88, Section 8, 85 Stat. 314.) (Emphasis added)

VOL. 28 U.S. CODE ANN. Section 2001 (b). Sale of Realty Generally; reads verbatim as follows:

After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

SUPERIOR COURT OF D.C. – CIVIL RULES
RULE 308
COURT SALES OF REAL AND PERSONAL PROPERTY

(a) SALE OF REAL PROPERTY. Unless otherwise herein provided, a sale of real estate or any interest in land under an order of this court shall be governed by the provisions of Title 28, Section 2001, U.S. Code in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this court.

(b) PUBLIC SALE . . . . . .

(c) PRIVATE SALE; PROCEDURE.

(1) ORDER FOR. A private sale may be ordered after a hearing of which notice to all interested parties is given by publication or otherwise as the Court may direct, if the Court finds the best interests of the estate will be conserved thereby.

(2) APPRAISERS. Before confirmation of a private sale the Court shall appoint three disinterested persons to appraise the property, or different groups of three appraisers each to appraise properties of different classes or situate in different locations.

(3) MINIMUM SALE PRICE. A private sale shall not be confirmed at less than two-thirds of the appraised value.

(4) ORDER NISI; INCREASED OFFER; CONFIRMATION. At least ten days before confirmation of a private sale the terms thereof shall be published

in such newspaper or newspapers of general circulation in the District of Columbia as the Court may direct, and the sale shall not then be confirmed if a bona fide offer has been made, under such conditions as the Court may prescribe, which guarantees at least a ten per cent net increase over the price specified in such published offer.

D.C. CODE 73 ED.

Section 21-1501. Appointment of conservators

When an adult residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness not amounting to unsoundness of mind, mental illness, as the latter term is defined by section 21-501, or physical incapacity, properly to care for his property, the Superior Court of the District of Columbia may, upon his petition or the sworn petition of one or more of his relatives or any other person or persons, appoint a fit person to be conservator of his property. (Sept. 14, 1965, 79 Stat. 774, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, Section 150 (i)(1), 84 Stat. 569.)

Section 21-1503. Bond; powers and duties

The conservator before entering upon the discharge of his duties shall execute an undertaking with surety to be approved by the court in such amount as the court orders, conditioned on the faithful performance of his duties as conversator. He shall have control of the estate, real and personal, of the person for whom he has been appointed conservator, with power to collect all debts due the person, and upon authority of the court to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply such part of the annual income and of the principal of the estate as the court authorizes to the support of the person and the maintenance and education of his family and children; and shall in all other respects perform the same duties and have the same rights and powers with respect to the property of the person as have guardians of the estates of infants. (Sept. 14, 1965, 79 Stat. 775, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

D.C. CODE 73 ED.

Chapter 1. – CONVEYABLE ESTATES AND METHODS OF CONVEYANCE

Section 45-101. Present, future, vested, and contingent interests conveyed by deed or will.

Any interest in or claim to real estate whether entitling to present or future possession and enjoyment, andwhether vested or contingent, may be disposed of by deed or will, and any estate which would be good as an executory devise, may be created by deed. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, Section 512; June 30, 1902, 32 Stat. 532, ch. 1329.)

Chapter 3. – DEVISES AND BEQUESTS

Section 18-301. Estates disposable by will

The real and personal estate of a person, which may pass by deed or gift, or which would, in case of the owner's dying intestate, descend to or devolve upon his heirs or other legal representatives, may be disposed of, transferred, and passed by his last will, testament, or codicil in accordance with this Part. (Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 20-1106. Authority of court regarding sales of realty; responsibility for proceeds; restrictions on sales; auditor's report; sales without reference to auditor

The Probate Court has plenary authority to administer the real estate situated in the District of Columbia of decedents as far as may be *necessary* for the payment of funeral expenses, debts, costs of administration, and estate, inheritance and succession taxes, and legacies, and to distribute among those en-

titled thereto the surplus proceeds of sales of real estate made in the course of the administration. The bonds of executors and administrators are responsible for the proceeds of sale of real estate sold by them under the order of the court for purposes of administration. A sale of real estate may not be made unless it is required for the purposes of paying the above-mentioned charges and such legacies as are chargeable upon the real estate, or, except where consents have been filed with the court as hereinafter provided, until the auditor of the court has ascertained and reported those debts and legacies, *the deficiency of personal assets*, and the real estate necessary to be sold for the payment of the charges and legacies. Objections to the report may be filed, heard and determined as provided by rules of court. *Upon a proper showing* by the fiduciary of an estate that the personal estate of a decedent is insufficient to meet all of the aforesaid charges and that all or part of the decedent's real estate must be sold to pay all or part of the said charges, the court may order the sale of all or part of said real estate without reference to the auditor, provided all persons who have an interest in the real estate to be sold shall have filed with the court their consents to the sale thereof. In the event a person having an interest in the said real estate is not sui juris, the court may accept on his behalf the consent of a fiduciary duly appointed for the estate of said person, or may appoint a guardian ad litem who shall have the right to file a consent on behalf of said person. (Sept. 14, 1965, 79 Stat. 718, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966; Aug. 11, 1971, Pub. L. 92-88, Section 8, 85 Stat. 314.) (Emphasis added)

SUBCHAPTER II – PROPERTY OF INFANTS

Section 21-141. Possession of property

On the execution of his bond, a guardian is entitled to an order of the court directing the real and personal estate of the

ward to be delivered into his possession, and all legacies and distributive shares to which the ward is entitled to be paid or delivered to him when they are properly payable or distributable according to law. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-142. Inventory

Within three months after the execution and approval of his bond, a guardian shall return to the court, under oath, an inventory of the real and personal estate of his ward and of the probable annual income thereof, and the court may direct the estate to be appraised and the annual income thereof to be ascertained by two competent persons, to be appointed by the court, who shall report their appraisement and finding under oath. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-143. Duties; accounts; maintenance and education; sales; compensation

A guardian shall manage the estate for the best interests of the ward, and once in each year, or oftener if required, he shall settle an account of his trust under oath. He shall account for all profit and increase of his ward's estate and the annual value thereof, and shall be allowed credit for taxes, repairs, improvements, expenses, and commissions, and he is not answerable for any loss or decrease sustained without his fault. The court shall determine the amounts to be expended annually in the maintenance and education of the infant, regard being had to his future condition and prospects in life; and if it deems it advantageous to the ward, may allow the guardian to exceed the income of the estate and to make use of the principal and sell it or part thereof, under the court's order, as provided by this subchapter; but a guardian may not sell any property of

his ward without an order of the court previously had therefor. The court shall allow a reasonable compensation for services rendered by the guardian not exceeding a commission of five per centum of the amounts collected, if and when disbursed. (Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-144. Property subject to liens

When an infant is entitled to real or personal estate in the District of Columbia which is liable to a mortgage, trust, or lien, or is in any way charged with the payment of money, the court may decree in the case as if the infant were of full age. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-145. Property subject to executory contract

When an infant is:

(1) entitled to real or personal estate in the District of Columbia bound by executory contract entered into by the person from whom the infant derived title; or

(2) claims a right or interest in property under such a contract—

the court may decree the execution of the contract or enter a just and proper decree, as if the parties were of full age. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-146. Contract for sale by adult in behalf of himself and infant

When a contract is made for the sale of real estate by persons interested therein jointly or in common with an infant, for and in behalf of all the persons so interested, which the

court, upon a hearing and examination of the circumstances, considers to be for the interest and advantage both of the infant and of the other persons interested therein to be confirmed, the court may confirm the contract and order a deed to be executed according to it. Sales and deeds made in pursuance of the order are sufficient in law to transfer the estate and interest of the infant in the real estate. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-147. Sale of infant's principal for maintenance or education

When it appears, upon the verified petition of a guardian, or in a case of his refusal to act, a next friend of an infant, and the appearance and answer of the infant by guardian to be appointed by the court, and proof by deposition of one or more disinterested witnesses, that a sale of the principal of the infant's estate, or of a part thereof, whether real or personal, is necessary for his maintenance or education, regard being had to his condition and prospects in life, the Probate Court may decree the sale on terms which to it seem proper. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-148. Sale or exchange of real estate; proceedings

When a guardian or, in case of his refusal to act, a next friend, deems that the interests of the ward will be promoted by a sale of his freehold or leasehold estate in lands, for the purpose of reinvesting the proceeds in other property or securities, or by an exchange of the property for other property, he may file a verified petition in the court, setting forth all the estate of the ward, real and personal, and all the facts which, in his opinion, tend to show whether the ward's interest will be promoted by the sale or exchange. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-149. Parties

The infant, together with those who would succeed to the estate if he were dead, shall be made parties defendant in the proceeding provided by section 21-148; and the court shall appoint a fit and disinterested person to be guardian ad litem for the infant, who shall answer the petition under oath. The infant also, if above the age of 14 years, shall answer the petition in proper person, under oath. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-150. Proof

Every fact material to determine the propriety of a sale or exchange shall be clearly proved, in a proceeding brought pursuant to section 21-148, by disinterested witnesses, whose testimony shall be taken in writing in the presence of the guardian ad litem or upon interrogatories agreed upon by him. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

Section 21-151. Decree of sale; costs

When, in a proceeding brought pursuant to section 21-148, the court is satisfied from the evidence that the interests of the infant require a sale or exchange, as prayed, and the rights of others will not be violated thereby, the sale or exchange may be decreed, and the costs of the suit shall be paid out of the infant's estate; otherwise they shall be paid by the complainant. (Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, Section 1, eff. Jan. 1, 1966.)

DISTRICT OF COLUMBIA COURT OF APPEALS
500 Indiana Avenue, N.W.
Washington, D.C. 20001

[FILED: 6/28/83]

No. 83-208
JULIAN I. RICHARDS, Appellant,

v. CA 8771-82

PATRICIA P. HAMILTON, ET AL., Appellees.

BEFORE: Newman, Chief Judge; Kern, Nebeker, Mack, *Ferren, *Pryor, Belson, and Terry, Associates Judges.

ORDER

This court treating appellant's petition for hearing en banc as a petition for rehearing or rehearing en banc of the May 27, 1983, judgment affirming the order on appeal, it is

ORDERED for the motions division* that appellant's petition for rehearing is denied.

It appearing that no judge of this court has called for a vote thereon, it is

FURTHER ORDERED that appellant's petition for rehearing en banc is denied.

PER CURIAM

Copies to: (Omitted)

DISTRICT OF COLUMBIA COURT OF APPEALS
500 Indiana Avenue, N.W.
Washington, D.C. 20001

NO. 83-208 [FILED: 5/27/83]

JULIAN I. RICHARDS,

Appellant,

v.

PATRICIA P. HAMILTON, ET AL.,

Appellees.

BEFORE: Ferren and Pryor, Associate Judges.

JUDGMENT

On consideration of appellees' motion for summary affirmance, the record on appeal, and appellant's brief, it is

ORDERED that appellee's motion be granted; and it is

FURTHER ORDERED and ADJUDGED that the order be, and it hereby is, affirmed.

FOR THE COURT:

ALAN I. HERMAN
CLERK OF THE COURT

Copies to: (Omitted)

DISTRICT OF COLUMBIA
COURT OF APPEALS

NOS. 9487, 9672 JANUARY TERM, 1976

JULIAN I. RICHARDS, Appellant, 1062-73

IN RE: Estate of Edith A. Parsons, Deceased.

Appeal from the Superior Court of the District of Columbia, Probate Division [FILED: 1/29/76]

BEFORE: Fickling, Harris and Mack, Associate Judges.

JUDGMENT

This case came on to be heard on the record from the Probate Division of the Superior Court of the District of Columbia and was submitted on appellant's brief.

On consideration whereof, and after a review of the record before us and the applicable law, the court is of the opinion that there exists no error of law which requires reversal.

Accordingly, it is this 29th day of January, 1976,

ORDERED and ADJUDGED that the judgment of the Superior Court of the District of Columbia in this cause be, and it hereby is, affirmed.

PER CURIAM.

FOR THE COURT:

ALEXANDER L. STEVAS,
CLERK

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Probate Division

IN RE: Administration No. 1062-73
ESTATE OF EDITH A. PARSONS,

Deceased

PETITION FOR AUTHORITY TO EXECUTE DEED OF

CONVEYANCE OF DECEDENT'S REAL ESTATE

The Petition of John L. Hamilton respectfully represents to this Honorable Court as follows:

1. That he is the duly appointed and qualified Ancillary Administrator, d.b.n., c.t.a., of the above estate;

2. That prior to decedent's death John Eris Powell, Esquire, was appointed Conservator of the person and estate of decedent and pursuant to the Order of this Court in Civil Action No. 1600-71 dated January 12, 1973, was appointed Trustee and authorized to execute and deliver a deed conveying decedent's one-half interest in the Howard Manor Apartments to Howard University, the sale of which had been previously approved by this Court under an Order Nisi dated December 15, 1972.

3. That Julian I. Richards, Esquire, noted appeals to the District of Columbia Court of Appeals from the Orders of this Court dated December 15, 1972 and January 12, 1973 which appeals were dismissed by said Court of Appeals.

4. That decedent died on February 19, 1973 before the said Conservator could execute the deed of conveyance, therefore, the Conservator was unable to comply with the Order of this Court.

5. That Julian I. Richards, Esquire, was appointed Ancillary Executor of the above estate and as Ancillary Executor had refused to execute the deed of conveyance.

6. That under date of December 10, 1973, the said Julian I. Richards, as Ancillary Executor, was ordered by this Court to sign and execute within ten (10) days from the date of the order all necessary documents and instruments to consumate the sale and conveyance of the interest of the decedent in the Howard Manor Apartments to the purchaser, Howard University, and in the event he failed or refused to sign said documents and instruments within such ten-day period, to be forthwith removed as Ancillary Executor of the estate of the decedent.

7. That the said Julian I. Richards failed to comply with the order of this Court and by virtue of the said order of this Court of December 10, 1973 was forthwith removed as Ancillary Executor; and as heretofore recited, Petitioner was appointed Ancillary Administrator, d.b.n., c.t.a., under date of January 7, 1974.

8. That the said Julian I. Richards has noted appeals to the District of Columbia Court of Appeals from the Orders of this Court dated December 10, 1973 and January 9, 1974 which appeals are still pending and which Petitioner believes to be without merit. That the said Richards has failed to take any action in this Court to stay the action of this Court in removing him as Ancillary Executor and appointing Petitioner as Ancillary Administrator, d.b.n., c.t.a.

9. That Petitioner is advised that the District Realty Title Company, which has examinedthe title of the property, is prepared to make settlement of the sale and to certify title to the real estate to be good in the purchaser if this Court directs the Petitioner to execute the deed of conveyance and other documents and instruments requisite to the consummation of the sale.

WHEREFORE, the premises considered it is prayed:

1. That Petitioner as Ancillary Administrator, d.b.n., c.t.a., be authorized and directed to execute the deed of conveyance and all other requisite documents and instruments to consummate the sale and conveyance of the interest of the decedent in Lots 825 and 826 in Square 3058 with improvements known as "The Howard Manor Apartments", 654 Girard Street, N.W., to the purchaser Howard University.

2. And for such other and full relief as to this Court seems just and proper.

/s/
John L. Hamilton
Ancillary Administrator,
d.b.n., c.t.a., of the Estate of
Edith A. Parsons

Subscribed and sworn to before me this 4th day of March, 1974.

/s/
Notary Public

My Commission Expires: February 28, 1979

JULIAN I. RICHARDS
Attorney at Law
6816 Elm Street
McLean, Virginia 22101

March 5, 1974

Re: Estate of Edith A. Parsons

John L. Hamilton, Esquire
Union Trust Building
Washington, D.C.

Dear Mr. Hamilton:

This is to acknowledge receipt of your "Petition For Authority to Execute Deed . . ." and your "Motion For Judgment . . ." both sworn to on March 4, 1974 together with certain proposed orders you have prepared.

I am writing to ask you two questions and to make a demand upon you.

1) Are you aware of appeal no. 7831 now pending before our District of Columbia court of appeals?

2) Are the funds of the estate of Edith A. Parsons now in your possession earning interest?

This letter is a demand that you turn over to me, subject to the approval of your final account by the court, as Executor of this estate duly appointed by the circuit court of Montgomery County, Maryland, all estate funds and records in your possession.

For your information, with reference to paragraph six (6) of your proposed "Motion For Judgment . . ." and, as I related to you when I visited you at your office recently, I did not re-

ceive the May Department Store dividend which you indicate should have been received on December 1, 1973. I am in possession of the proceeds of the Dresser Industries dividend check which was in the amount of $1995.00.

I enclose my letters of appointment as Executor of the estate of Edith A. Parsons, dated August 1, 1973, under seal.

Very truly yours,

Julian Imbrie Richards

cc: (Omitted)

DISTRICT OF COLUMBIA
COURT OF APPEALS

Appeal No. 8406 — January Term, 1974
Estate of Edith A. Parsons, Deceased
Julian I. Richards, Appellant
[FILED: 5/10/74]

MOTION FOR STAY OF EXECUTION

Comes now, Julian I. Richards, Executor of the Estate of Edith A. Parsons in its domicilliary administration No. 0170573J in the Circuit Court of Montgomery County, Maryland and moves this honorable court, pursuant to its Rule 8, for a stay of execution of the order of the Superior Court of the District of Columbia in administration 1062-73, dated May 7, 1974, authorizing and directing ancillary administrator, d.b.n. c.t.a. John L. Hamilton to execute deed of conveyance of decedant's real estate, and as reasons therefore assigns the following:

1. An application for a stay of execution of the aforesaid order made to the Superior Court is not practicable as appears clearly in your movant's brief on file in appeal No. 7831 now pending before this court.

2. The issues involving the legality, equity and propriety of this May 7th order and of a deed which might be executed pursuant to it are now pending before this court in appeal No. 7831, the dismissal of earlier appeals 7128 and 7225 by this court notwithstanding.

3. A stay of said order would enable the Ancillary Administrator d.b.n. c.t.a. to be assured that he should not be taking

action ostensibly required of him by his duties and enable him to give this Executor the cooperation he is entitled to.

4. The facts relied upon by this Executor have not been disputed in the matter of the judicial sale. To appellant's knowledge no brief other than his own has yet been filed in Appeal No. 7831. To appellant's knowledge and belief there are no facts in dispute amongst any of the participants in the administration of this estate from it inception in CA 1600-71 by order of U. S. District Court Judge Wm. Jones appointing John E. Powell as conservator.

Respectfully submitted,

/s/ Julian I. Richards

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Probate Division

IN RE: **Administration No. 1062-73**

ESTATE OF EDITH A. PARSONS,

DECEASED

ORDER AUTHORIZING AND DIRECTING ANCILLARY ADMINISTRATOR, d.b.n., c.t.a., TO EXECUTE DEED OF CONVEYANCE OF DECEDENT'S REAL ESTATE

Upon consideration of the Petition of John L. Hamilton, Ancillary Administrator, d.b.n., c.t.a., of the Estate of Edith A. Parsons, for authority to execute a deed of conveyance of decedent's one-half interest in certain real estate, and it appearing to the Court that proper notice has been given to Julian I. Richards, Esquire, former Ancillary Executor of the Estate, and to David B. Nicholson, Esquire, attorney for Barbara Jane Richards and Elizabeth Ann Richards, it is by the Court this 7th day of May, 1974.

ADJUDGED, ORDERED AND DECREED that John L. Hamilton, as Ancillary Administrator, d.b.n., c.t.a., of the Estate of Edith A. Parsons, be and he hereby is authorized and directed to execute a deed of conveyance and all other documents and instruments to consummate the sale and conveyance of the interest of decedent in Lots 825 and 826 in Square 3058 with improvements known as "The Howard Manor Apartments", 654 Girard Street, N.W., to the purchaser Howard University.

Judge

DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 8044, 8143, 8406 — January Term, 1974

[FILED: 11/27/74]

Julian I. Richards, Appellant
Estate of Edith A. Parsons, Deceased — Adm. 1062-73

RESPONSE TO SHOW CAUSE ORDER
MOTION FOR ADDITIONAL TIME TO FILE HIS BRIEF

Comes now, Appellant, Julian I. Richards, Executor of the Will of Edith A. Parsons, deceased, in response to this honorable court's order entered on November 13, 1974 requiring him to show cause why these appeals should not be dismissed. Responding thereto, and, in support of his contention that these appeals should be heard on the Briefs with oral argument, and that he should be granted additional time to file his Brief, he relates the following:

1. Appellant did, in Appeal No. 7831, simultaneously with the filing of this pleading, file a petition with this court for a rehearing, pursuant to Rule 40, of its decision entered on November 13, 1974 holding that this Appellant is barred by the doctrine of res judicata from further litigating his objection to the real property sale begun in CA 1600-71, a conservatorship of Property proceeding administering the estate of Edith A. Parsons, and, dismissing Appeal No. 7831 accordingly. Action on the captioned appeals should, at the very least, abide the outcome of the court's action on the petition for a rehearing.

2. Appeals Nos. 8044, 8143 and 8406 raise the issue of the validity of the deed made in Adm. 1062-73 by the ancillary administrator which ostensibly completed the sale begun in CA 1600-71. That deed was executed pursuant to the order appealed from in Appeal No. 8406 in the entirely separate probate proceeding involving Mrs. Parsons' estate, adm. 1062-

73. The order and Deed were both made over the objection of this Appellant at a time when the objector was serving as both Executor of the estate in its domiciliary administration in Maryland and as ancillary Executor in its administration in Virginia and at a time when Appellant had pending before this court appeals from the order appointing the administrator and the order removing Appellant as fiduciary of the estate in the District of Columbia. The usurpation of authority by the administrator was supposedly justified, apparently, by his consideration of this estate administration as being one continuous proceeding as evidenced by the motion to dismiss made to this court with a caption combining Nos. 7831, 8044, 8143 and 8406, made on or about May 23, 1974. The administrator's execution of a deed to the subject property came at a time when he was apparently in doubt from which court he should seek his authority as evidenced by his effort by motion in this court to have all the appeals then pending dismissed as just previously mentioned. This he sought before he executed the deed. Since no action was taken by this court on that motion, the subsequent execution of the deed and the title purportedly conveyed thereby were made under a cloud of invalidity requiring a review by this court.

3. Appellant has had pending before this court since May 10, 1974 a motion for additional time to complete the appeal in Nos. 8044 and 8143, and would think that the fact that the court hasn't ruled on that motion but did consolidate Nos. 8044, 8143 and 8406 is reason enough for the court to now rule on that pending motion and grant this Appellant additional time to complete the consolidated appeal by the filing of his brief. That motion also presents cogent reasons these appeals should not be dismissed and the court's attention to it is requested.

4. Compelling personal family considerations have forced Appellant to close his law office in McLean, Virginia and move his residence and law practice to his home at 109 Bay Colony Drive, Virginia, at considerable economic loss. He is just completing this move and much valuable time has been consumed in doing so. He is in debt because of the necessity of the move and the economic value he can derive by reinstatment as ancillary executor of his Aunt's estate in the District of Columbia can do much to relieve the economic pressure upon him and for these reasons he desires to complete this appeal from his removal. He does not intend to attack the practice of court in issuing show cause orders without oral testimony because he doubts he will be given enough time to do so and his reinstatement is more important to him at this time and he will endeavor to complete the appeal as soon as possible.

5. Appellant is contending in his petition for a rehearing that Res Judicata does not apply since the confirmation order of January 12, 1973 was not a final order ending all controversy between the parties as is amply evidenced by the hearing out of which the May 7, 1974 order arose authorizing the execution of the deed to complete the sale. He is also contending that his Appeal 7831 from the final order in Conservatorship CA 1600-71 properly places before this court all questions of law which arose throughout the conservatorship. Therefore, Appellant reserves his right to attack the validity of the deed in this appeal since the deed and the relevant circumstances surrounding it are apparently not considered an integral part of a judicial sale in this jurisdiction.

WHEREFORE, the premises considered, appellant prays that this court take this motion under advisement and postpone its ruling thereon until such time as it has ruled on the

aforementioned petition for a prompt rehearing of Appeal 7831.

Respectfully submitted,

/s/ Julian I. Richards

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Additional Time was mailed, postage prepaid, this 27th day of November 1974 to John L. Hamilton, Esquire, Suite 600, Union Trust Building, Washington, D.C., adm. d.b.n. c.t.a.; David B. Nicholson, Esquire, 1000 16th Street, N.W., Washington, D.C., attorney for residuary legatees, Barbara Jane Richards and Elizabeth Ann Richards.

/s/ Julian I. Richards

DISTRICT OF COLUMBIA
COURT OF APPEALS

NO. 8406 JANUARY TERM, 1974

IN RE: [FILED: 12/20/74]

EDITH A. PARSONS,
A Conservatorship

JULIAN I. RICHARDS,
Appellant.

CA 1600-71

BEFORE: Nebeker, Yeagley and Harris, Associate Judges.

ORDER

On consideration of appellant's response to this court's show cause order of November 13, 1974, and of the record on appeal herein, it is

ORDERED that this appeal is hereby dismissed.
PER CURIAM.

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

IN RE

EDITH A. PARSONS Civil Action No. 1600-71

A CONSERVATORSHIP

SUGGESTION OF DEATH

Now comes John Eris Powell Conservator in the above-entitled matter and reports to the Court that Edith A. Parsons, the ward, died on February 19, 1973 and that accordingly the Conservator files herewith his Second and Final Account.

John Eris Powell

John Eris Powell, Conservator
4701-S Sangamore Road
Sumner, Maryland 20016
229-3494

I hereby certify that on the 21st day of February, 1973, I mailed, postage prepaid, copies of the above Account and Suggestion of Death to Julian I. Richards, P. O. Box 234, McLean, Virginia 22101, Elizabeth Ann Richards, 5210 Norway Drive, Chevy Chase, Maryland 20015 and to Barbara Jane Richards, 5210 Norway Drive, Chevy Chase, Maryland 20015.

John Eris Powell

John Eris Powell

[Letter Postmarked March 28, 1973]

JOHN ERIS POWELL
Attorney at Law

The Honorable Alexander L. Stevas
Clerk
District of Columbia Court of Appeals
400 F Street N.W.
Washington, D.C. 20001

Re: No. 7726
In re: Edith A. Parsons,
A Conservatorship

Dear Mr. Stevas:

I have received from your office the notice that the reporter's transcript was docketed on March 26 and a praecipe suggesting that I enter my appearance as counsel for the appellee. Mrs. Edith A. Parsons died on February 19, 1973 and I filed my Final Account as Conservator just a few days later.

The Appeal pending in your Court is from an Order of the Superior Court authorizing me, as Conservator, to sell Mrs. Parsons' interest in a certain piece of real estate in the District of Columbia in order to raise funds which were then needed for the support of Mrs. Parsons and her household.

In my opinion the death of Mrs. Parsons terminated the conservatorship and my authority to act in pursuance of the Superior Court order. Accordingly, I consider the Appeal to be moot and I do not intend to enter an appearance.

Sincerely yours,

/s/ John Eris Powell

DECEMBER 6, 1973
HEARING, D.C. SUPERIOR COURT
ON RULE TO SHOW CAUSE

* * * * * *

(T.25)

(The Court) On what grounds am I without jurisdiction?

(Mr. Richards) I rely on *Brewster versus Gage* [phonetic] which is 280 US 327, and the Fifth Amendment.

(The Court) Very well.

(Mr. Richards) Relying on *Maloney versus Spencer* [phonetic], 170 Fed 2d 231, and *Goldsmith versus Valentine* [phonetic], 35 Appeals, D.C. 299, it is my position that the jurisdiction over the judicial sale has been since November 17, of '72, in the District of Columbia Court of Appeals. To speak of conservatorship proceedings 1600 dash '71, as possessing the attributes necessary to be classified as an on-going and functional – as being on-going and functional between the time of Mrs. Parsons' death and the present time, such that this court – such, that the court, rather, with jurisdiction over it could enter a decree ordering an executor make and deliver a deed transferring title to the real property, is to speak of extra-legal avoidable actions, smacking of abusive process since it would fly in the face of *Brewster versus Gage* and the Fifth Amendment.

* * * * * *

Office - Supreme Court, U.S.
FILED
DEC 5 1983
ALEXANDER L. STEVAS,
CLERK

NO. 83-745
NO. 83-746

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JULIAN I. RICHARDS,

Petitioner,

vs.

HOWARD UNIVERSITY, a Corporation,
and
PATRICIA P. HAMILTON, Personal Representative
of the Estate of John L. Hamilton, deceased

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF RESPONDENT HOWARD UNIVERSITY IN OPPOSITION

RUBY DIANE WYATT
2900 Van Ness Street, N. W.
Washington, D. C. 20008

Counsel for Respondent,
Howard University

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

NO. 83-745
NO. 83-746

JULIAN I. RICHARDS,

Petitioner,

vs.

HOWARD UNIVERSITY, a Corporation,
and
PATRICIA P. HAMILTON, Personal Representative
of the Estate of John L. Hamilton, deceased

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF RESPONDENT HOWARD UNIVERSITY IN OPPOSITION

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Montana v. United States,
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Semler v. Psychiatric Institute of Washington, D.C., Inc.,
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STATUTES

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28 United States Code §2001 7

STATEMENT

Petitioner brought suit in the Superior Court of the District of Columbia and the District Court to "remove a cloud and quiet title" to real property located in the District of Columbia to which he claims a one-sixth undivided interest. He once again is seeking review of the administration of his aunt's estate and judicial sale of the subject property.

The facts relevant herein, which initiated this spate of lawsuits and appeals were set out by Judge Nebeker in the Appeals opinion in *In re Edith A. Parsons,* 328 A.2d 383 (D. C. App. 1974)[1] as follows:

> "In August 1971, Richards petitioned the United States District Court to be appointed conservator of the estate of his aunt, Edith A. Parsons.[1] In September, 1971, the court appointed another individual to be the conservator.
>
> The estate included a one-half interest in an apartment house valued in excess of $190,000. The proposed sale of that property precipitated the instant case as well as two previous appeals. During the summer of 1972, the conservator was informed by the trustee of an estate holding the other one-half interest in the apartment house that he intended to sell the trust interest and that if necessary he would seek partition. The conservator entered into negotiations for the sale of the property rather than have a judicial partition of it. The conservator sought consent for the sale from Richards and his two sisters. Only Richards objected. The trial court held a hearing on October 20, 1972, to air Richards' objec-

[1]District of Columbia Court of Appeals Case No. 7831 brought by Julian I. Richards, Appellant herein, appealing an order of Superior Court dated October 20, 1972, confirming a conservator's sale of the subject property.

tions which included, along with certain irrelevancies, concern over the loss of rental income. The trial court, perceiving the issue to be what would be in the best interest of the ward and the ward's estate found

> 'that it is in the best interest of the estate of the ward, and of the ward individually, that the conservator be permitted to proceed to the private sale of the real estate in question . . .'

The Court then ordered the conservator to proceed with a private sale of the one-half interest. (Emphasis added.).

---

[1]Jurisdiction over this action was subsequently transferred to the Superior Court pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970 . . ." Id. at 384.

The remaining interest in this property was owned by the estate of H. B. Smithy, the trustee of which is American Security and Trust Company. In August, 1972 a contract was entered into by Howard University as buyer and American Security and Trust Company (trustee) as seller whereby Howard Manor Apartments (subject property) would be sold to Howard University. John Eris Powell as conservator for Edith A. Parsons submitted the contract for approval to the Superior Court of the District of Columbia in the above referenced Order Nisi proceeding (C. A. 1600-71).

Subsequent to the Order Nisi having been entered on the 15th day of December, 1972, having been duly published and no cause having been shown why the contract for the sale of the said one-half interest to Howard University, Inc. should not be ratified and no offer having been made which guaranteed at least a ten (10%) percent net increase over the price specified in the contract, the Order Nisi was entered by the Court on January 12, 1973 ratifying and confirming the sale

as set forth by the terms of the aforesaid contract.

Edith Parsons died on February 19, 1973 prior to the completion of the sale and plaintiff claims that his 1/6 interest vested at that time but acknowledges the District of Columbia's ancillary administration of his aunt's estate which subjected his vested title to possible divestiture under D. C. Code §20-1106 (1973 ed.).

On March 4, 1974, John L. Hamilton, deceased, in his capacity as ancillary administrator d.b.n., c.t.a. of plaintiff's aunt's estate, petitioned the Probate Division of the Superior Court of the District of Columbia for authority to execute a deed to complete a judicial sales contract arising out of a property conservatorship proceeding of the estate, C.A. 1600-71 in the Superior Court. Such authority was granted by Judgment Order of the Probate Division of Superior Court dated May 7, 1974, and Petitioner's aunt's 1/2 undivided interest in the Howard Manor Apartments was conveyed to the defendant, Howard University. The deed, which had been executed by John L. Hamilton, deceased, pursuant to the Judgment Order of May 7, 1974, was recorded on May 15, 1974.

Thereafter, plaintiff appealed the Judgment Order of the Superior Court to the District of Columbia Court of Appeals, Case No. 7831. The third in a series of appeals challenging the procedure leading to the sale of real property during the administration of his aunt's estate. This appeal was dismissed. See *In re Parsons,* 328 A.2d 383 (1974) rehearing denied by order entered December 16, 1974. (See A 1). This decision was appealed to the Supreme Court. (See A 2). The appeal was dismissed and certiorari was denied. (See A 3).

Now over seven years later two lawsuits on the same issues were brought, one in the Superior Court of the District of

Columbia and in the United States District Court for the District of Columbia. Each of which were dismissed on the basis of res judicata. (See petitioner's brief U.S.C.A. A1-6 and petitioner's brief DCA, A13-16).

ARGUMENT

The petitioner in this case presents only one question - one that does not warrant review on certiorari. Petitioner makes a vigorous attempt to persuade the Court to grant his petition on the basis of substantial federal question, i.e. deprivation of his fifth and fourteenth amendment constitutional rights asserting that property was taken from him without due process.

However, petitioner was afforded all due process rights to which he was entitled; he made objections and appearances to the Court as follows:

1. Petitioner refused to give conservator consent for the sale, see *In Re Edith A. Parsons, supra.*
2. Petitioner appeared at a Court hearing on October 20, 1972 to "air" his objections to the sale, Id. at 384.
3. Petitioner made general objections to sale decision at a hearing on December 15, 1972, Id. at 384.
4. Petitioner also filed two appeals from the trial court's actions. Said appeals were dismissed for *lack of prosecution* (emphasis supplied). Id. at 384.

Petitioner's failure to prosecute in the last instance was failure on his own part to exercise his due process rights.

Moreover, petitioner, approximately eight years ago litigated his case to the highest court of the District of Columbia and to the highest court in the land and was denied a writ of certiorari at that time. He is bound by the decisions of those

courts on his prior appeals. The doctrine of *Res Judicata* applies to bar and preclude appellant from bringing a subsequent action on issues previously raised or adjudicated. *United States v. Epstein,* 608 F.2d 1, 2 (D. C. Cir. 1979).

It is well settled that once a claim or cause of action has been presented for adjudication and a valid and final judgment on the merits is rendered, the same claim or cause of action cannot be asserted in a subsequent lawsuit. *Semler v. Psychiatric Institute of Washington, D. C., Inc.,* 575 F.2d 922 (D. C. Cir. 1978); *Hagans Management co., Inc. v. Nichols,* 409 A.2d 179 (D. C. App. 1979); *Thornton v. Little Sisters of the Poor,* 380 A.2d 593 (D. C. App. 1974).[2] *Res Judicata* operates as a direct estoppel to completely and absolutely bar subsequent actions based on the same claim or demand between the same parties. *Henderson v. Snider Bros., Inc.,* 439 A.2d 481, 485 (D. C. App. 1981); *Thornton v. Little Sisters of the Poor, supra,* at 595.

The Supreme Court set out the doctrine in Commissioner of *Internal Revenue v. Sunnen,* 333 U.S. 591, 68 S. Ct. 715, 92 L. Ed. 893 (1947) as follows:

> "The general rule of res judicata applies to repetitious suits involving the same cause of action. It rests upon considerations of economy of judicial time and public policy favoring the establishment of certainty in legal relations. The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and

[2]A judgment is final if it could not become affected by further proceedings in the court in which it was rendered. *Mazaleski v. Harris,* 481 F. Supp. 696, 698 (D.D.C. 1979). Furthermore, a dismissal with prejudice operates as an adjudication on the merits and thus, operates to bar a subsequent action. *Dupree v. Jefferson,* 666 F.2d 606, 610, n.25 (D. C. Cir. 1981).

their privies are thereafter bound 'not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' *Cromwell v. County of Sac,* 94 U.S. 351, 352, 24 L. Ed., 195. The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. See on Moschzisker, 'Res Judica', 38 Yale L. J. 299; Restatement of the Law of Judgment, § § 47, 48."

Petitioner relies on *Montana v. United States,* 440 U. S. 147 (1979), quoting "headnote 8A" for the proposition that "redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedure followed in prior litigation". (See USCA petition of petitioner, p. 15).

A review of *In re Parsons, supra,* reveals that petitioner's original appeal in 1973 (No. 7128, Consolidated with No. 7225) from the order permitting the sale of the property was dismissed for lack of prosecution. Id. at 384. Petitioner raised the issue of lack of authority of the Superior Court of the District of Columbia to effectuate the subsequent sale confirmation in a third appeal from a subsequent confirmation order, which was also dismissed in *In re Parsons* on the grounds of res judicata.

Petitioner further argues that the Superior Court had no jurisdiction to make the confirmation order initially. Judge Nebeker, in discussing the jurisdictional issue, in *In re Parsons, supra* which petitioner raised in that case, stated:

"Our first concern is whether the dismissal of the appeal in No. 7225, thus making final the confirmation order, precludes further litigation on the issue appellant is presently raising. Authority for a conservator to sell real prop-

> erty is contained in Superior Court Civil Rule 308. Most notably, the rule states that, unless otherwise provided, sale of real property is to be governed by 28 U. S. C. §2001 and Superior Court Civil Rule 308 reveal that the *final judicial step leading to a private sale is court approval through confirmation. Subsequent to that confirmation the parties are committed to complete the transaction.* (Citations omitted) . . ." Id. at 385.

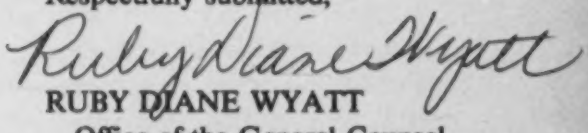
Petitioner refers to yet another appeal (No. 9672) from the Superior Court judgment order dated January 26, 1976, in re final order approving the account of the ancillary administrator, John Hamilton. As pointed out by Judge Nebeker in *In re Parsons, supra,* Petitioner did not challenge the report or statement after receiving a copy of an order ratifying the report and directing that the statement be made, Id. at 384-385.

Petitioner admits to notice in March, 1974 of the ancillary administrator's petition for authority to execute the deed and to convey the property. (Record Excerpts from the United States District Court for the District of Columbia Case No. 82-1854), but failed to raise any issue as to the validity of the sale of the property at that time and before the Superior Court of the District of Columbia Probate Division entered an order on May 7, 1974 approving the conveyance. He, likewise, failed to raise any issue as to the jurisdiction of the Superior Court in issuing the judgment order dated May 7, 1974. His failure to do so resulted in the dismissal of his appeals by the District of Columbia Court of Appeals on the ground of *res judicata.*

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court deny the petition.

Respectfully submitted,



RUBY DIANE WYATT
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Howard University
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Washington, D.C. 20059

Counsel for Respondent

APPENDIX A

ORDER DENYING REHEARING PETITION
DISTRICT OF COLUMBIA
COURT OF APPEALS
Filed December 16, 1974

NO. 7831 JANUARY TERM, 1974

IN RE:

EDITH A. PARSONS,
A Conservatorship

JULIAN I. RICHARDS,
Appellant.

CA 1600 – 71

BEFORE: Nebeker, Yeagley and Harris, Associate Judges.

ORDER

On consideration of appellant's "Petition for Rehearing", it is

ORDERED that appellant's aforesaid petition is denied.

PER CURIAM.

Copies to:

DISTRICT OF COLUMBIA
COURT OF APPEALS
Filed January 22, 1975

NO. 7831 January Term 1975

In Re:

Edith A. Parson,
A Conservatorship

Julian I. Richards,
Apellant.

CA 1600-71

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given to the court possessed of the record that Julian I. Richards, the Appellant above named hereby appeals to the Supreme Court of the United States from the final judgment of the District of Columbia Court of Appeals in Case No. 7831, entered in this action on November 13, 1974, the mandate on which was issued to the Superior Court of the District of Columbia on December 24, 1974.

This appeal is taken pursuant to Title 28 United States Code 1257(2) providing that:

> Final Judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

And, pursuant to Title 11-101 of the District of Columbia Code, 1967 Edition, Supplement V (1972); and, by reason of the statutes, contained in Title 11 and Title 21 of the District of Columbia Code, 1967 Edition, Supplements IV and V, and the 1973 edition, in force and effect during the proceeding known as CA 1600-71, as designated by the Superior Court of the District of Columbia, as they pertain to a conservatorship of property proceeding.

Experiencing difficulty obtaining counsel to represent him in this matter, in part due to his financial condition, but with the determined intention so to do, the appellant hereby seeks to reserve unto himself without prejudice, his privilege to petition to the Supreme Court for a review on writ of certiorari all of the matters regarding the estate of Edith A. Parsons now pending, or a matter of record, in the District of Columbia Court of Appeals; the Superior Court of the District of Columbia; the Circuit Court of Virginia Beach, State of Virginia; the Circuit Court of Montgomery County, State of Maryland; the Special Court of Appeals, State of Maryland and/or the Court of Appeals, State of Maryland.

Certificate of Service

I hereby certify that a copy of the foregoing notice will be mailed, certified mail, showing address where delivered on the requested return receipt pursuant to Rules 10 and 33 of the Supreme Court of the United States, by depositing the notice in a United States post office, with first class postage prepaid, addressed to counsel of record at their post office addresses, and, addressed to all parties required to be served, in the same manner and evidenced by the same proof, id est, signed certified mail receipt.

/s/ Julian I. Richards.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543
October 6, 1975

Julian I. Richards, Esq.
109 Bay Colony Drive
PO Box 692
Virginia Beach, Va. 23451

RE: **RICHARDS v. RICHARDS, ET AL.,**
74-1501

Dear Sir:

The Court today entered the following order in the above-entitled case:

The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.

cc:

Very truly yours,

Michael Rodak, Jr., Clerk

/s/ Helen Taylor
Helen Taylor (Mrs.)
Assistant Clerk